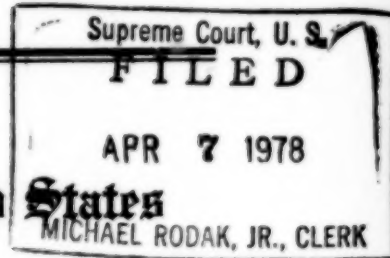


IN THE
Supreme Court of the United States
OCTOBER TERM, 1977



No. 77-1318

WESTERN UNION INTERNATIONAL, INC.,
Petitioner,
against

FEDERAL COMMUNICATIONS COMMISSION, UNITED STATES OF
AMERICA, AMERICAN TELEPHONE & TELEGRAPH COMPANY,
RCA GLOBAL COMMUNICATIONS, INC., ITT WORLD COMMUNI-
CATIONS INC., and TRT TELECOMMUNICATIONS CORPORATION,
Respondents.

**BRIEF OF RESPONDENT
ITT WORLD COMMUNICATIONS INC.
IN SUPPORT OF THE
PETITION FOR A WRIT OF CERTIORARI**

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Respondent ITT World Communications Inc. ("ITT Worldcom") submits this memorandum in support of the Petition for a Writ of Certiorari which has been submitted to the Court by Petitioner, Western Union International, Inc. ("WUI").

WUI petitions the Court to review a decision of the United States Court of Appeals for the Second Circuit, which affirmed a number of orders entered by the Federal Communications Commission ("FCC").¹ In these Orders, the FCC purported to find that certain contracts between

1. The Court of Appeals decision is reproduced as Appendix F to WUI's Petition, and the FCC Orders at issue are reproduced as Appendices B, C, D, and E.

the international record carriers ("IRCs")² and respondent American Telephone & Telegraph Company ("AT&T") specified rates and charges which were unreasonably discriminatory, and which were therefore unlawful under Section 202(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 202(a). On the basis of this finding, the FCC required AT&T to increase substantially its charges to IRCs, so that the amounts paid by the IRCs would equal the rates that AT&T charged its domestic competitors for communication services which the FCC deemed to be "like" the services AT&T provided the IRCs.

While ITT Worldcom does not wish to burden the Court with repetitive argument, it respectfully requests that a writ of *certiorari* be granted for the reasons set forth in WUI's Petition. The FCC's decisions, if permitted to remain in effect, will increase the operating costs of the IRCs by millions of dollars annually. The prospect of so serious an economic impact on an industry of international importance makes this case sufficiently important to merit this Court's consideration.

Moreover, the FCC's decisions raise significant issues of federal administrative and regulatory law, which this Court *should* address. As WUI's Petition makes clear, the FCC's determination that the IRCs were being charged unreasonably discriminatory rates by AT&T is based on nothing more than the functional similarity of the communications services which AT&T was providing the IRCs and the domestic carriers. The FCC concededly had no knowledge of AT&T's costs of serving the two groups of carriers; nor did it make any investigation of the impact of the alleged discrimination on the public or the domestic

2. The IRCs include ITT Worldcom, WUI, and respondents RCA Global Communications, Inc. and TRT Telecommunications Corp.

carriers (which do not compete with the IRCs and which have never complained of the "preference" the IRCs were allegedly enjoying). This Court's prior decisions establish that, in these circumstances, the FCC has not made the findings necessary to establish that the rates specified in the AT&T-IRC contracts were unreasonably discriminatory.³

Assuming that the FCC had properly found that the rates being charged the IRCs were discriminatory, this case also presents the question of whether the FCC made the appropriate findings before requiring AT&T to increase its rates to the IRCs. Section 205(a) of the Communications Act, 47 U.S.C. § 205(a), expressly requires the FCC to find that new rates are "just and reasonable" before it prescribes their applicability. Here, the FCC did not purport to make a finding that the rates being charged the domestic carriers would be "just and reasonable" if applied to the IRCs. Nor could it have done so on the record before it, because it had not obtained the necessary cost data from AT&T to permit it to determine whether the rates charged the domestic carriers were reasonably related to AT&T's costs.

Instead of attempting to make the statutorily-mandated finding, the FCC forced AT&T to increase the IRCs' rate "voluntarily." WUI's Petition fully demonstrates that the FCC, while ostensibly permitting AT&T to decide the manner in which "discrimination" would be eliminated, in

3. In addition to the cases cited by WUI in its Petition, *see*, *F.P.C. v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956). These two cases hold that an administrative agency may interfere with inter-carrier contracts only if the agency has first found that abrogation or modification of the contracts is necessary to protect the public interest. As the Second Circuit recognized, no such finding was made here. *See* p. 89a of the Petition.

actuality left AT&T no option except to raise the IRCs' rates to the higher levels then being charged the domestic carriers. The question of whether the FCC may thus evade the regulatory scheme of the Communications Act, by inducing a carrier into "voluntarily" filing the rates which the agency wishes to prescribe, is a second issue presented by this case which is worthy of this Court's consideration.

Conclusion

For the reasons stated above, respondent ITT World Communications Inc. respectfully requests that the Petition for a Writ of *Certiorari* be granted.

Respectfully submitted,

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